

BEFORE THE
BOARD OF OCCUPATIONAL THERAPY
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

CLYDE L COOPER
2709 Mill Oak Drive
Modesto, CA 95355

Respondent.

Case No. AR 2002-234

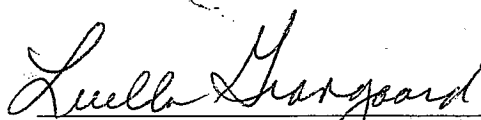
OAH No. N2004070300

DECISION

The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the BOARD OF OCCUPATIONAL THERAPY as its Decision in the above-entitled matter.

This Decision shall become effective on February 5, 2005.

IT IS SO ORDERED January 6, 2005.



LUELLA GRANGAARD, PRESIDENT
CALIFORNIA BOARD OF OCCUPATIONAL THERAPY

BEFORE THE
CALIFORNIA BOARD OF OCCUPATIONAL THERAPY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the First Amended
Accusation Against:

CLYDE LORANG COOPER
2709 Mill Oak Drive
Modesto, CA 95355

Occupational Therapy Assistant
Certificate No. OTA 1143.

Case No. AR-2002-234

OAH No. N2004070300

PROPOSED DECISION

On October 25 and 26, 2004, Administrative Law Judge M. Amanda Behe, State of California Office of Administrative Hearings, heard this matter in Turlock, California.

Complainant was represented by Janice Lachman, Deputy Attorney General.

Respondent was represented by Jeffrey S. Kravitz, Attorney at Law.

The matter was submitted on October 26, 2004.

FACTUAL FINDINGS

1. Complainant Gretchen L. Kjose is the Executive Officer of the California Board of Occupational Therapy (the Board), Department of Consumer Affairs.

2. On February 28, 2003, the Board issued Occupational Therapy Assistant Certificate No. OTA 1143 to Clyde Lorang Cooper (respondent). The certificate was in full force and effect at all times relevant to the charges in the Accusation and First Amended Accusation, and is scheduled to expire on July 30, 2005.

3. Business and Professions Code section 2570.26 provides that after a hearing the Board may deny, suspend, revoke, or place on probation a certificate or inactive certificate.

4. Business and Professions Code section 2570.28 provides that the Board may discipline a licensee for any of the following:

(a) Unprofessional conduct ...

...

(d) Making or giving any false statement or information in connection with the application for issuance or renewal of a license ...

...

(h) Committing any ... corrupt act that is substantially related to the qualifications, functions, or duties of a licensee ...

(i) Committing any act punishable as a sexually related crime, if that act is substantially related to the qualifications, functions, or duties of a licensee.

(j) Using excessive force upon or mistreating or abusing any patient.

...

(o) Committing any act that would be grounds for denial of a license under Section 480¹.

5. Business and Professions Code section 125.3 provides the following:

(a) Except as otherwise provided by law, in any order issued in resolution of a disciplinary proceeding before any board within the department ... the board may request the administrative law judge to direct a licensee found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

...

(c) A certified copy of the actual costs, ...signed by the entity bringing the proceeding or its designated representative shall be prima facie evidence of reasonable costs of investigation and prosecution of the case. The costs shall include the amount of investigative and enforcement costs up to the date of the hearing, including, but not limited to, charges imposed by the Attorney General.

(d) The administrative law judge shall make a proposed finding of the amount of reasonable costs of investigation and prosecution of the case when requested pursuant to subdivision (a). The finding of the administrative law judge with regard to costs shall not be reviewable by the board to increase the cost award. The board may reduce or eliminate the cost award, or remand to the administrative law judge where the proposed decision fails to make a finding on costs requested pursuant to subdivision (a).

...

¹ Business and Professions Code section 480, subdivision (a)(3), provides that a board may deny a license on the grounds that the applicant has done any act which, if done by a licensee of the profession in question, would be grounds for suspension or revocation of the license.

(g)(1) Except as provided in paragraph (2), the board shall not renew or reinstate the license of any licentiate who has failed to pay all of the costs ordered under this section.

...

6. Prior to 1983 respondent was a roofer. He worked as a truck mechanic and a welder from 1983 until 1996, and then was on disability. Occupational therapists helped respondent's comatose father after his stroke until his death five days later. Respondent was interested in their work, and enrolled in Andon College from which he obtained an associate in science degree in 2000.

In November 1999, while in school, respondent began a year of employment as an occupational therapy aide at Modesto Rehabilitation Hospital. His education included at least two internships.

PATIENT CHRISTINE C.

7. Christine C. a patient with fibromyalgia, diabetes, and carpal tunnel syndrome, was a patient at the Stanislaus County Health Services Agency medical clinic at 830 Scenic Drive in Modesto. The clinic has a Physical Therapy Department, and an Occupational Therapy Department where respondent was employed as a certified occupational therapy assistant (COTA). Anne Fultz, OTR/L, CHT, supervised the Occupational Therapy Department at the clinic. She worked on Tuesdays and Thursdays, and respondent worked Monday through Friday.

In the summer of 2002 Christine C. received physical therapy 2-3 times per week related to her fibromyalgia. She occasionally saw respondent in the Physical Therapy Department, where COTAs would bring patients to use the equipment. They exchanged greetings, and both participated in conversations among patients and staff. On Wednesday, August 28, 2002, respondent asked Christine C. about her wrist brace, and suggested occupational therapy to help her fibromyalgia. She obtained a referral and an appointment for the following day.

8. On August 29, 2002, Ms. Fultz evaluated Christine C. and completed a treatment plan for her occupational therapy. Immediately thereafter respondent provided occupational therapy services to Christine C. while Ms. Fultz was present. He documented HEP, MH, tendon glides, rice, massage and Biofreeze, large massager, and therapy balls. Christine C. recalled moving her hand around in a bowl of rice, squeezing a ball, extending and curling her fingers, etc. Respondent massaged Christine C.'s right arm from her palm to mid-forearm.

9. On Friday, August 30, 2002, respondent was the only COTA in the occupational therapy clinic². Respondent provided and documented the same therapy services to Christine C. as he had provided on August 29, 2002.

On August 30, 2002, or earlier respondent asked if Christine C. was married, and she said she could not understand why her husband left because she is a good cook and housekeeper, and he had good sex. On August 30 they discussed sexual matters; including respondent stating he dreamed of having sex with her and that his wife would not have sex with him. She remarked on the pictures of his very young child, and respondent claimed that was the last time he had sex with his wife. Christine C. said to not even think about sex with her because she had a boyfriend.

Respondent massaged Christine C.'s right arm from the wrist to the upper arm. She did not understand why he was massaging her upper arm for a carpal tunnel problem. Respondent stroked the side of her breast, and she pushed his hand away but he stroked her breast at least three more times. Christine C. told him to not do that, and he made no reply. She considered that respondent was an authority figure and did not know what to do, or if it would cause problems for her at the clinic.

10. Respondent first testified at hearing that: "I don't talk with patients about personal things." He then acknowledged that he spoke to Christine C. about his children, and could have taken her into the office where he keeps their pictures.

When asked why Christine C. would allege sexual misconduct if it had not occurred respondent testified that:

I seriously think she thought I was very interested in her when I suggested that she come to see us on the Wednesday³, and when Thursday came and I just treated her like another patient, and when Friday came and she was just another patient and I didn't go out of my way to be overly friendly and ask her how she was doing, I think she was attracted to me and somewhat let down that I was not pursuing her, as she may have thought I was doing before.

When asked why, given the friendly nature of their prior contacts, Christine C. would misinterpret a professional question respondent testified: "I believe she was very needy." Respondent's views were not persuasive. No credible evidence suggested that she was attracted to respondent or emotionally needy.

11. On Friday, August 30, 2002, Christine C. told her counselor that respondent touched her sexually during an occupational therapy treatment. The counselor recommended

²Olga Betulyan, a recent graduate, was working in a program which respondent described as "like work experience through EDD." She briefly entered and left the occupational therapy room a couple times during Christine C.'s appointment.

³ Respondent was referring to the occasion when he observed respondent wearing a brace, and then suggested that she obtain occupational therapy services.

reporting the matter to the patient advocate at Stanislaus County Health Services Agency. The following Monday, September 2, was Labor Day. Christine C. reported respondent's conduct on the next work day, September 3, 2002.

Respondent first learned Christine C. filed a complaint the following week. He testified: "I was appalled ... it was unbelievable." An investigation was conducted by the Equal Rights Officer and the Director of Personnel for the Stanislaus County Health Services Agency. As reflected in his October 2002 evaluation they determined that respondent engaged in appropriate behavior, and his probation was extended for an additional six months. Respondent did not successfully complete probation and was terminated at the end of February 2003. He did not appeal that termination. Respondent obtained a job at Modesto Rehabilitation Hospital.

12. About March 2003, after respondent was working at Modesto Rehabilitation Hospital, the Stanislaus County Health Services Agency received a complaint from Adult Protective Services that he had engaged in sexual misconduct with a mentally ill patient. The patient, who resided in a board-and-care home, and reported to her psychiatrist that she performed oral sex on respondent when he visited her there. Respondent admitted to investigators that he went to the patient's residence, but claimed he visited only to move furniture.

At hearing respondent testified that he "has no idea why" the patient made the allegation, and he only moved furniture in her room at the board-and-care facility. He appeared to see no impropriety in going to a mentally ill patient's room after being the subject of a sexual misconduct investigation.

13. On March 27, 2003, Ms. Fultz wrote to the Board expressing her concern about the danger respondent posed to patients, and discussing four complaints that he engaged in sexual misconduct. Ms. Fultz' letter included the hearsay information that in March 2003 another patient reluctantly disclosed that in 2001 respondent took her into a treatment room for a massage and touched her breast. The patient related that respondent told her as well as other patients that he had a terrible marriage and his wife denied him sex. She had not reported the matter out of concern for respondent's wife and children, but was prompted to do so by his dismissal from employment.

14. Board expert Marlene Steele⁴ described that COTAs provide occupational therapy assistance in acute care, outpatient, home health, and mental health settings. COTAs work under the supervision of a registered occupational therapist (OTR) who evaluates the patient and establishes a treatment plan. A COTA is not authorized to evaluate patients or determine the services to be provided or manner of delivery.

⁴ Ms. Steele earned an associate of science degree in the Occupational Therapy Program at Sacramento City College. She was a COTA with NovaCare Skilled Nursing, Dry Creek School District, and Burger Rehabilitation. As a COTA at Mercy San Juan Hospital she currently provides acute care and in-home services. Ms. Steele is also an instructor at Sacramento City College in the OT physical disabilities lab. She is an officer of the Occupational Therapy Association of California, and previously chaired various association committees.

Prior to the COTA providing services to a patient the OTR should discuss the case and treatment expectations, and provide written instructions and/or the treatment plan. A COTA who believes a change in the treatment plan is warranted can suggest amendments to the OTR, but cannot unilaterally change the treatment plan. Changes in the treatment plan should be documented by the OTR.

15. Occupational therapy degree programs include an ethics class which addresses maintaining professional boundaries and avoiding personal involvement with patients. Ethical considerations are also mentioned in other classes, such as the necessity of properly draping a patient for treatment.

Ms. Steele persuasively opined that the COTA is responsible for setting professional boundaries with the patient, including halting any sexual discussion or jokes, and positioning him/herself to avoid inappropriate contact. She noted that if an accidental inappropriate contact occurs the COTA should immediately apologize and reposition him/herself so the contact will not recur. It is inappropriate for a COTA to continue when the patient says to halt physical contact.

16. Ms. Steele reviewed Christine C.'s records, investigation reports, and declarations regarding the case. Ms. Steele persuasively opined that respondent's touching of Christine C.'s breast was unprofessional conduct, patient mistreatment or abuse, and corrupt acts substantially related to the qualifications, functions, and duties of a licensee.

PATIENT SHERYL P.

17. In November 2002, concurrent with his employment at the Stanislaus County Health Services Agency clinic, respondent took a second job with Soleus Healthcare Agency (Soleus), a home health care agency. Clifton MacKinnon⁵, OTR, was respondent's supervisor at Soleus.

Respondent testified that he did not tell Soleus about Christine C.'s complaint of sexual misconduct because it had not been filed yet. In fact her complaint was filed August 3, 2002, and respondent did not begin working for Soleus until November 2002. When reminded of those dates respondent admitted that the complaint and the related extension of his probation predated his employment at Soleus.

Through Soleus Mr. MacKinnon sent respondent out on home visits to provide COTA services about 3-5 times per week. He usually contacted respondent at his home, and respondent went to the Soleus office to pick up treatment plans and drop off paperwork.

⁵ Mr. MacKinnon has been a registered occupational therapist since 1987, and currently works at the Modesto Visiting Nurse Association. While a student at Andon College respondent had two internships with Mr. MacKinnon.

18. Sheryl P. is a teacher who suffered a work injury which resulted in substantial brachial plexus damage. Despite a cervical fusion and more than a year of physical therapy her left shoulder, arm, and hand do not function properly and she has difficulty raising her arm, lifting objects, etc. In late 2002 Peggy Felice, R.N., Sheryl P.'s case manager at Corvel Corporation, arranged for occupational therapy services from Soleus. The Referral Form noted an evaluation and two visits were authorized.

On November 25, 2002, Mr. MacKinnon evaluated Sheryl P. at her house, and he noted on the evaluation form her difficulty with meal preparation, homemaking, fasteners, grooming and dressing. He made entries on the form that there was no impairment of Sheryl P.'s cognition including orientation, attention/concentration, judgment/safety, insight, reasoning, decision making, follow instructions(sic), new learning, problem solving, long term memory, or short term memory. Mr. MacKinnon's treatment plan provided for COTA services regarding activities of daily living, specifically grooming, dressing and meal preparation. The treatment plan did not provide for massage. Mr. MacKinnon signed the treatment plan on November 25, 2002, at 5:00 p.m.

19. During the evening of November 25, 2002, Mr. MacKinnon faxed to respondent a cover page and seven additional pages, apparently his evaluation of Sheryl P. The cover page noted that only two follow-up visits were authorized. In late November respondent made several calls to Sheryl P. to arrange treatment. She was away on a trip for Thanksgiving and they did not speak until November 30, 2002. Respondent said the two visits had to be completed by November 30 and he would fudge the dates. They made an appointment for the following day, December 1, 2002.

Respondent's representation that the visits had to be completed by November 30, 2002, was false. The Corvel referral did not indicate that the two visits had to be completed within that time. Mr. MacKinnon acknowledged that there was no requirement that the two visits occur by November 30, 2002.

20. During the December 1, 2002, home visit Sheryl P. related that she had difficulty dressing, particularly pulling garments over her head and using buttons, because of the limited use of her left arm. Respondent provided information about modifying household, dressing, and grooming tasks and showed her an equipment catalogue. She described pain from a four-hour return trip for the Thanksgiving holiday. Respondent asked if she wanted a neck and shoulder massage, and said he would need someplace flat. Sheryl P. replied that the only accessible flat place was the end of her bed, which does not have a footboard.

Sheryl P. was familiar with chiropractic massages in which the patient disrobes and is covered with a sheet. In the bathroom she removed her top and bra, and wrapped a large bathsheet around her body under her arms. After she lay face down on the end of her bed respondent massaged her upper back, shoulder and neck. He asked how it felt and she replied relaxing. Then respondent had Sheryl P. roll over and massaged the muscles above her breast where she had some atrophy from limited use of her left arm. Then respondent

slid his hands under the towel and touched her nipples. Sheryl P. sat straight up, said "You're through" and left the bedroom.

Sheryl P. redressed in the bathroom and then found respondent in the living room. He talked about making another appointment and "fudging" the dates. Sheryl P. said she would have someone at home with her if he returned. She signed the document respondent presented and he left. In a later telephone call she told respondent she would not cooperate with misrepresenting the date of his visit.

21. Sheryl P. filed a criminal report regarding respondent's sexual abuse with the Turlock Police Department. She also reported the matter to Ms. Felice, who contacted Soleus about respondent's conduct.

22. Respondent completed a form captioned "OCCUPATIONAL THERAPY VISIT NOTE" which he dated December 1, 2002. He made checkmarks on the form that Sheryl P.'s mental status was alert and oriented to person, place and time, and demonstrated recall of prior education/training. In the "Assessment" section of the form he wrote the following:

Pt. was issued AE catalogue & suggestion were made for AE for meal prep & rearrangement of dishes, dried foods & simplifications were recommended... Pt. was instructed and demonstrations were given on 'Hemi' UB dressing techniques & AE was recommended. Pt. was shown AE for grooming such as long handle brushes & combs. Pt. was urged to stretch UB & loosen up Clyde Cooper COTA
Addendum: Pt. requested & was given L UE PROM & L shldr massage (with) Biofreeze. Clyde Cooper COTA.

On December 3, 2002, respondent met Mr. McKinnon at Soleus to drop off his visit notes and travel claims. Mr. MacKinnon does not recall if the Addendum was on the form when he saw it, and opined that respondent wrote it after his initial note.

Mr. MacKinnon does not recall specifically discussing the massage with respondent. Respondent claimed that they discussed the massage on December 3, because he learned of the patient's complaint at the same time. Respondent testified that "At the time I didn't feel it was a big concern because it was not true - I didn't think it would come to this⁶."

Ms. Walker directed Mr. MacKinnon to cease making referrals to respondent for COTA services through Soleus.

23. On December 29, 2002, Sheryl P. wrote to Ms. Walker that respondent put his hands on her breasts and touched her nipples during a massage in the course of an OT visit to her home. She wrote that:

⁶ Respondent was referring to the subject administrative hearing.

I have had massages before and have NEVER experienced anything so unprofessional and humiliating. I have had various health care people come through my doors in my 20 months of recovery but nothing like this has EVER happened. He acted like nothing wrong had happened.

Sheryl P.'s letter described her communications with Soleus since the event including that Ms. Felice called on her behalf on December 2, 2002, and Sheryl P.'s calls on December 12 and two later dates.

Sheryl P. also filed a complaint with the Medical Board of California in the mistaken belief that that agency had jurisdiction over COTAs. Her complaint was then referred to the California Board of Occupational Therapy.

24. Ms. Steele reviewed the investigation reports, declarations, and patient medical records regarding Sheryl P.'s complaint. She testified that with proper training COTAs may provide massage therapy such as scar massage, deep tendon massage, retrograde massage, etc., provided the treatment is related to the patient's specific injuries. The COTA must be positioned to not touch the patient sexually, and assure that the patient is properly draped. Respondent acknowledged that he has no education or experience in massage therapy aside from his work as a COTA and some training in hand massage from Ms. Fultz.

25. Massage was not part of the treatment plan for Sheryl P. or authorized by the OTR or her physician. Ms. Steele persuasively opined that a COTA cannot unilaterally change a treatment plan, or perform a massage in any setting if it is not provided on the treatment plan. If a patient identifies a new pain, such as Sheryl P. had from her long trip, the COTA must contact the OTR to return and reassess the patient.

Mr. MacKinnon also acknowledged that a COTA is required to follow the care plan, and that treatment or exercise not on the plan could possibly exacerbate a patient's problem.

26. Ms. Steele persuasively opined that respondent engaged in unprofessional conduct by performing a massage not provided on the treatment plan or authorized by the OTR or physician. Even if the massage had been authorized and part of the treatment plan respondent was obligated to perform it with the patient properly covered and not touch her breast. Ms. Steele persuasively opined that respondent engaged in sexual abuse of Sheryl P. by touching her breast.

27. Respondent admitted that he knew a COTA is required to follow the OTR's treatment plan for the patient, and that something which is not on the plan should not be part of his therapy. He claimed that he felt it was acceptable to deviate from Sheryl P.'s treatment plan because:

I don't want to say I was given carte blanche but (Mr. MacKinnon) would have agreed to the changes I did.

Respondent acknowledged that he never deviated from treatment plans during his two internships with Mr. MacKinnon or any other time prior to the Sheryl P. case.

Respondent's theory of defense was not persuasive. He knew that massage should not be part of his therapy because it was not on the treatment plan. That he assumed Mr. MacKinnon would let him get away with departing from the treatment plan does not make his violation of the standard acceptable.

28. Mr. MacKinnon considers that respondent giving a massage was not a "serious" deviation from the treatment plan. When he learns of "more than one" deviations from a treatment plan Mr. MacKinnon discusses it with the COTA and if it does not recur again he considers it "no problem." His view was not persuasive, particularly in light of his testimony that patients could be harmed by a COTA deviating from a treatment plan and the need to provide only authorized therapy services.

29. Respondent claimed that he had written notes of what occurred in his treatment of Sheryl P. so he would have them if it ever came to court, and that he "just reviewed" the notes before the hearing "but left it at home." When asked why he did not bring the notes on the second day of the hearing he stated "I didn't realize it needed to be part of evidence or anything ... it's just notes of what happened step by step." His testimony was not credible. The most limited amount of common sense would appreciate that if such notes existed they would be crucial to his case. Respondent acknowledged that he never mentioned having such notes when police questioned him about his conduct with Sheryl P.

30. Respondent asserted that Sheryl P. made her complaint because he would not provide a treatment visit to which she was not entitled because it would not have been completed by November 30, 2002. He first testified that after the December 1, 2002, home visit he "never heard from (Sheryl P.) again." He immediately recanted that claim by stating "I take that back, she called and said did you reconsider can you make it back on Tuesday night" he said no. Respondent's claims were not credible. There was no requirement that the two COTA visits be completed by any specified date⁷.

31. Respondent further claimed that Sheryl P.'s complaint was the result of her infatuation with him. In apparent contradiction of the theory that she filed a complaint because he would not provide an unauthorized treatment, respondent testified that:

... it was not the treatment she was interested in ... she just wanted me to come back... I think she was attracted to me and wanted me to come back... After I told her 'No' she called me at my house and asked me to come back. ... It was just the way she acted ...

⁷ See Finding 20, above.

32. Respondent also asserted that Sheryl P. was under the influence of drugs. He testified that

I thought she was under the influence of pain medication to the point that she did some pretty bizarre things ... (such as) she hung on every word I said when I was advising her about how to do things... (and) didn't ask questions when I told her things like how to set dishes in the kitchen. Looking back on it things were inappropriate but at the time I thought she was under the influence of something - this is the way she is. I didn't realize it was something more.

Respondent admitted that he did not document on his visit form his current claims that Sheryl P. was under the influence of pain medication. He admitted that he did not see Sheryl P. take any pain medication but claimed "with my experience you can tell if someone is under the influence of medication or alcohol." Respondent has never taken an education course on that subject, and the only "experience" he could identify was working as a COTA for three years. His claims that Sheryl P. was under the influence of drugs and behaved bizarrely during his home visit were not credible, and refuted by the entries he made on the visit form⁸.

33. During the home visit Sheryl P. displayed the method she used to remove her top with the limited use of her left arm. Respondent testified that she "raised her arm much higher than previously" and that indicated to him that she "was malingering." Respondent's testimony did not establish that Sheryl P. was malingering. Moreover, respondent's home visit form contains no notation that her range of motion differed from that observed by Mr. MacKinnon. Mr. MacKinnon had measured her range of motion, noted it in his evaluation and treatment plan, and determined that she needed occupational therapy for activities of daily living, including dressing⁹.

34. In a further effort to impugn Sheryl P.'s honesty respondent presented evidence that Medicare requires that a patient be home-bound to receive in-home therapy, and her Thanksgiving trip established that she is not home-bound. However, respondent's own witness refuted the argument. Mr. MacKinnon testified that to receive home health care through Medicare it must be a "taxing effort" for the patient to leave home. He acknowledged that no such limitations govern patients on workers' compensation, such as Sheryl P.

Two COTA visits were authorized for Sheryl P., and nothing in her file indicated to Mr. MacKinnon that she wanted more visits than allowed by her treatment plan.

35. Mr. MacKinnon opined that there is no reason why respondent would have his own copies of Sheryl P.'s medical records. COTAs usually keep a field copy of their own

⁸ See Finding 32, above.

⁹ See Finding 18, above.

notes for current in-home patients, and shred those notes at the conclusion of treatment for patient privacy reasons.

Respondent claimed he kept Sheryl P.'s medical records because "someone in Soleus" whom he could not specifically identify suggested he might want them in case her complaint "was ever pursued." He acknowledged that he knew from his training that it was inappropriate to keep a patient's medical records.

OTHER MATTERS

36. While employed at the Stanislaus County Health Services Agency respondent made a complaint that a patient exposed her breasts to him. He had taken the patient to a treatment room for a massage and told her to put on a gown. She put the gown on backwards so it was open in the front. Respondent opined that she had not misunderstood how to put gown on. He acknowledged that in their multiple prior contacts the patient always acted and conversed appropriately. Respondent was upset that other staff learned about, and appeared amused by, the incident. He filed a complaint that he was the victim of sexual harassment. Respondent could not recall if the patient who filed a complaint that he kissed her was the same individual he complained exposed her breasts.

Respondent testified that there were "several instances" when he sexually harassed at the county, and it occurred:

... often enough there that I would go back to the PT Department and get one of the ladies from there anytime that I felt uncomfortable to come sit through a treatment if I was by myself. That happened on several occasions.

When asked why he was the subject of so many complaints of sexual misconduct in the couple years since his licensure respondent said he did not know. He acknowledged that such events have not occurred to his coworkers. Respondent finally attributed the situation to his being "just unlucky."

37. Jeannette Williams is the Director of Rehabilitation at Modesto Rehabilitation Hospital, which employs approximately six COTAs. She has been respondent's supervisor since she hired him in March 2003, and opined his work skills are excellent.

When he was hired respondent disclosed to Ms. Williams that one prior patient had filed a complaint against him. She did not check with Stanislaus County because respondent asked her not to contact his employers because there were some problems. Respondent said there were some "ethical considerations" at Soleus but Ms. Williams did not ask him to be more specific. Ms. Williams testified that a patient complaint, the "ethical considerations," and his request that she not check with his employers "did not concern" her.

After the District Attorney's office contacted Modesto Rehabilitation Hospital the facility took the precautions that he is prohibited from working with female clients without a

third party present and he was cautioned regarding conversations with patients. Ms. Williams could not recall when those precautions were initiated, but they are presently in place. She testified that they will continue "until he is cleared ... when we hear that everything has been dropped." Ms. Williams was clearly unaware that four patients had complained of sexual abuse by respondent.

Ms. Williams completed a job evaluation of respondent on March 9, 2004, in which she rated his overall performance at 80.1% and commented that he is a valuable team member who adjusts his treatment to patient individually to attain maximum function for them.

During his employment with Modesto Rehabilitation Hospital respondent filed a sexual harassment claim against another employee who was later dismissed.

38. Respondent testified that at Modesto Rehabilitation Hospital he "was asked" to not perform any treatments in private for female patients. His characterization was misleading; the limitations were required by his employer and not a matter of respondent's choice.

With regard to the restrictions respondent testified "I like it this way because ... little old ladies don't like to be told by a younger man how to dress." Most of the clients of Modesto Rehabilitation Hospital are geriatric patients. Respondent is 49 years old.

RESPONDENT'S APPLICATION

39. On December 8, 2002, respondent completed an "APPLICATION FOR LICENSE/CERTIFICATE/LIMITED PERMIT" under penalty of perjury. He filed the application with the Board, which received it on December 11, 2002. Respondent noted on the form that he was certified by the National Board for Certification in Occupational Therapy, and held certificate No. 10433170.

The APPLICATION FOR LICENSE form included a chart captioned "Section V: Work/Experience in Occupational Therapy (within the past five years, most recent first)" which required the facility name, address, and the position held and dates. Respondent wrote that he worked at Health Services Agency of Stanislaus County, 830 Scenic Avenue, Modesto, CA "From 9-11-02 To present" in the position of "Hand Clinic COTA." In fact respondent worked in a general occupational therapy clinic, and was not employed at a "hand clinic." At hearing respondent offered no explanation for his false representation that he worked in a specialized "hand clinic."

The only other entry respondent made in Section V of the application was his employment at Modesto Rehabilitation Hospital "From 7-00 To 9-11-01" in the position of "Rehab COTA."

40. Respondent failed to disclose his employment at Soleus in November and December 2002. At hearing he admitted that he worked for Soleus in November and December 2002. Respondent first testified that during that period he had no other employment, and then said he was simultaneously employed by Stanislaus County while working at Soleus to supplement his income for Christmas.

Respondent testified that he did not list his employment at Soleus because at the time of his application they were out of business. His testimony was not credible. In fact Soleus was still in existence on December 8, when he completed the application, and on December 11, when he filed it with the Board. At least as of December 13, 2002, Soleus was in communication with Sheryl P. regarding her complaint that respondent sexually abused her. Moreover, the application required that all work experience within the preceding five years be listed, not only employment with extant employers.

Respondent next claimed that he did not list his employment with Soleus because "I didn't believe it was relevant." His testimony was neither credible nor persuasive. The application required that all work experience in occupational therapy within the preceding five years be listed, not only that considered relevant by the applicant.

Respondent claimed that his employment with Soleus stopped because "they went out of business." His testimony was not credible, and he later admitted on cross-examination that Soleus was not out of business at the time he filed the application. Mr. MacKinnon's testimony established that respondent's work at Soleus stopped at Ms. Walker's direction because of the complaint of sexual abuse.

Respondent denied that he failed to disclose his employment at Soleus on his "APPLICATION FOR LICENSE/CERTIFICATE/LIMITED PERMIT" because he did not want the Board to learn of the allegation of sexual abuse. His testimony was wholly lacking in credibility.

41. The "APPLICATION FOR LICENSE/CERTIFICATE/LIMITED PERMIT" required that an applicant list convictions. Respondent disclosed that on February 10, 1989, in the Siskiyou County Superior Court, in Yreka, California, he was convicted of violation of Penal Code section 243.4A (SEXUAL BATTERY).

42. The hearsay patient notes of appreciation and Modesto Rehabilitation Hospital employee recognition forms were considered in the Order.

43. Complainant provided a certified copy of the actual costs which pursuant to Business and Professions Code section 125.3 is prima facie evidence of reasonable costs of investigation and prosecution of this matter. Those costs totaled \$12,330 for the investigation and prosecution of the subject case.

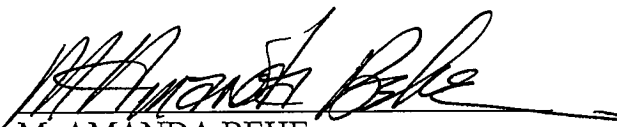
LEGAL CONCLUSIONS

1. Clear and convincing evidence to a reasonable certainty establishes cause for revocation of respondent's license pursuant to Business and Professional Conduct section 2570.28, subdivision (a), for unprofessional conduct.
2. Clear and convincing evidence to a reasonable certainty establishes cause for revocation of respondent's license pursuant to Business and Professional Conduct section 2570.28, subdivision (h), for corrupt acts substantially related to the qualifications, functions, and duties of a licensee.
3. Clear and convincing evidence to a reasonable certainty establishes cause for revocation of respondent's license pursuant to Business and Professional Conduct section 2570.28, subdivision (i), for acts punishable as sexually related crimes as provided in Penal Code section 243.4 (sexual battery).
4. Clear and convincing evidence to a reasonable certainty establishes cause for revocation of respondent's license pursuant to Business and Professional Conduct section 2570.28, subdivision (j), for mistreatment and abuse of patients.
5. Clear and convincing evidence to a reasonable certainty establishes cause for revocation of respondent's license pursuant to Business and Professional Conduct section 2570.28, subdivision (d), for providing false information in his license application.
6. Clear and convincing evidence to a reasonable certainty establishes cause for revocation of respondent's license pursuant to Business and Professional Conduct section 2570.28, subdivision (o), for committing acts constituting grounds for denial of a license or certificate.
7. Pursuant to Business and Professions Code section 125.3, cause for ordering respondent to pay costs in the amount of \$12,330 was established.

ORDER

Occupational Therapy Assistant Certificate No. OTA 1143 issued to Clyde Lorang Cooper IS REVOKED. Within ninety days of the effective date of this Decision respondent Clyde Lorang Cooper shall pay the Board's costs of investigation and prosecution of the subject case in the sum of \$12,330.

Dated: December 21, 2004


M. AMANDA BEHE
Administrative Law Judge
Office of Administrative Hearings